

Tax impact of the repeal of the foreign employment income exemption on South African professionals

20 July 2017

The Taxation Laws Amendment Bill 2017 (2017 TLAB) was published for public comment on 19 July 2017.

One of the changes proposed is the repeal of the so-called foreign employment income exemption, contained in section 10(1)(o)(ii) of the Income Tax Act. If implemented, the exemption will be repealed with effect from 1 March 2019.

The impact of the aforementioned section is that employment income earned by a South African tax resident is exempt from South African income tax if that person is outside of South Africa for the purposes of rendering services for, or on behalf of, his/her employer for an aggregate period that exceeds 183 full calendar days during any 12-month period, commencing or ending during a South African year of assessment, if the person in question renders services outside of South Africa for a continuous period of at least 60 full days, during that 12-month period. Many South Africans make use of this favourable exemption, but treasury is of the view that the exemption is being abused.

One group of South African persons who are especially popular with foreign employers and who make use of the foreign employment income exemption are South African chartered accountants who completed their articles at one of the so-called big four auditing firms in South Africa and have qualified as "CA (SA)s".

The big four auditing firms provide opportunities for their employees who have successfully passed all their board exams and completed their articles to travel overseas for a fixed period of time and to work in one of the firm's foreign offices. Many of these CA (SA)s often do not immediately return to South Africa but take up fixed-term contracts in places such as, for example, the Cayman Islands, the Isle of Man, Guernsey, Jersey and Dubai. The rate of personal income tax in some of these jurisdictions is 0%, or at least significantly lower than South Africa's tax rates. As long as these young South African professionals intend returning to South Africa and consider South Africa to be their home, they remain subject to tax on their worldwide income in South Africa. However, because of the foreign employment income exemption, their foreign employment income is exempted from South African income tax as explained above.

If the proposed repeal of the foreign employment income exemption is ultimately implemented come 2019, South African tax resident employees working overseas will effectively pay the same aggregate amount of income tax as they would have paid had they been working only in South

Africa.

Many South African tax residents working in low tax jurisdictions could be left "high and dry". The cost of living in low tax jurisdictions is often extremely high and, while it may be true that these persons could make use of foreign tax credits for taxes paid in the foreign jurisdictions in which they work, they will not be able to receive any form of credit for their high living costs. Depending on the circumstances, these South Africans may face significant cash flow challenges when having to pay South African income tax on their foreign salaries.

Soon there may no longer be a financial benefit to working in a low tax jurisdiction and the benefits may be reduced to gaining international work experience and the opportunity to travel the world.

It would be interesting to see what the impact of this will be on young professional South Africans in general. Will they give up their dream of travelling the world and merely remain in South Africa after obtaining their professional qualifications? Will they decide to permanently emigrate from South Africa before growing any significant wealth in South Africa? Or will they merely bite the bullet and pay the tax in addition to the high foreign living costs?

[> Read the full article online](#)